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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 BRET ROBERT OSBORN, MICHAEL
13 PFAFF, KATHLEEN ANN PFAFF AND
14 MARTY GAYLE OSBORN, on behalf of
themselves, the general public, and all
others similarly situated,

15 Plaintiffs,

16 vs.

17 EMC CORPORATION, and Does 1
18 through 50,

19 Defendant.
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CASE NO. C 04-00336 JSW

**[PROPOSED] ORDER GRANTING JOINT
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT
REGARDING "LEASE CLAIMS"**

DATE: April 28, 2006

TIME: 9:00 a.m.

HON. Jeffrey S. White

1 This matter came before the Court for hearing on April 28, 2006, at 9:00 a.m. before
 2 Judge Jeffrey S. White, pursuant to the Order: (1) Conditionally Certifying Settlement Class; (2)
 3 Preliminarily Approving Proposed Settlement; (3) Approving Notice To Class, Claim Form, And
 4 Form Of Election Not To Participate In Settlement Class; And (4) Setting Hearing For Final
 5 Approval Of Settlement, entered on October 28, 2005 ("Preliminary Order"), for final approval of
 6 the settlement as set forth in the parties' Joint Stipulation For Settlement And Release Between
 7 Plaintiffs and Defendant Regarding "Lease Claims" Asserted In This Matter ("Settlement
 8 Agreement"). The Court, having entered the Preliminary Order, determined that due and
 9 adequate notice has been given to the Settlement Class as required by the Preliminary Order, and
 10 having considered all papers filed, the arguments of counsel, the law and otherwise being fully
 11 informed, and good cause appearing therefore,

12
 13 IT IS ORDERED, ADJUDGED AND DECREED that:

- 14
 15 1. All terms used in this order granting final approval to the class action settlement
 16 ("Final Order") shall have the same meaning as defined in the Settlement Agreement.
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 18 2. This Court has jurisdiction over the subject matter of the Lawsuit and over all
 19 parties, including all Class Members.
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 21 3. Pursuant to the Preliminary Order, the Court preliminarily certified the following
 22 Class for Settlement purposes to include the following:

23 **ALL CURRENT AND FORMER SALES EMPLOYEES OF EMC**
 24 **CORPORATION DURING TIMES THEY WORKED WITHIN THE**
 25 **STATE OF CALIFORNIA WHO WERE CHARGED BACK PREVIOUSLY**
 26 **PAID COMMISSIONS ON LEASE TRANSACTIONS AT ANY TIME**
 27 **FROM AUGUST 18, 1999 UNTIL THE SETTLEMENT EFFECTIVE**
 28 **DATE.**

29 In certifying the Class, the Court found and still finds that: (1) the members of the Settlement
 30 Class are so numerous that joinder of all class members in this action is impracticable; (2) there
 31 are questions of law and fact common to the members of the Settlement Class; (3) the questions

1 of law and fact common to the members of the Settlement Class are substantially similar and
2 predominate over any questions affecting only individual members of the Settlement Class; (4)
3 the claims or defenses of the representative Plaintiffs are typical of the claims or defenses of the
4 members of the Settlement Class; (5) the representative Plaintiffs and their counsel have fairly
5 and adequately protected the interests of the Settlement Class; and (6) a class action is superior to
6 other available methods of fair and efficient adjudication of the controversy, considering, *inter*
7 *alia*, (a) the interests of the members of the Settlement Class in individually controlling the
8 prosecution of separate actions, (b) the extent and nature of any litigation concerning the
9 controversy already commenced by members of the Settlement Class, (c) the desirability or
10 undesirability of prosecuting the litigation of these claims in this particular forum, and (d) the
11 difficulties likely to be encountered in the management of the class actions. Accordingly, the
12 Settlement Class is now finally and conclusively certified for Settlement purposes;

13 4. In accordance with the Preliminary Order, the parties caused to be mailed the
14 following: (1) Notice of Conditional Certification of Class, Preliminary Approval of Proposed
15 Settlement Regarding "Lease Claims"; (2) Claim Form; and (3) form of Election Not to
16 Participate in Settlement Class (collectively the "Notice Materials"). The Notice Materials were
17 sent via first class mail within the time mandated in the Preliminary Order, and adequately
18 informed the Settlement Class of: (1) the pendency of the proposed Settlement of the Lease
19 Claims; (2) all material elements of the proposed Settlement; (3) the April 28, 2006 hearing date
20 for final approval of the Settlement; and (4) the opportunity to be excluded from the proposed
21 Settlement Class or otherwise object to the proposed Settlement. Anya Verkhovskaya of A.B.
22 Data, the settlement administrator, filed a declaration with the Court on March 13, 2006
23 concerning the dissemination of the Notice Materials and the status of claims and objections.

24 5. The Notice Materials provided due and adequate notice to potential Settlement
25 Class members and constitutes the best notice practicable and possible under the circumstances.
26 The proof of dissemination filed with the Court demonstrates that this Court's orders have been
27 complied with in regard to the Notice Materials and preliminary approval of the Settlement, and
28 further, that the best notice practicable and possible under the circumstances was in fact given and

1 constituted valid, due, and sufficient notice to members of the Settlement Class, complying fully
2 with all applicable statutes and laws, including California Code of Civil Procedure Section 382.

3 6. No Class Member has filed an objection to or opted out of this Settlement.

4 7. The parties' Settlement Agreement is granted final approval, as the Court finds the
5 Settlement is, in all respects, fair, reasonable and adequate to the parties and Class Members. The
6 Court orders the parties to effectuate the Settlement Agreement according with its terms. A copy
7 of the Settlement Agreement is attached to this order as **Exhibit A** to Docket No. 142.

8 8. The Settlement Class is bound by the release and waiver listed in Paragraphs 31
9 and 32 of the Settlement Agreement, respectively, and this Final Order, which Final Order shall
10 have the force and effect of *res judicata* as to them.

11 9. By operation of this Final Order and the Settlement Effective Date, the Settlement
12 Class and each individual member of the Settlement Class fully release and discharge Defendant,
13 and all present and former parent companies, subsidiaries, affiliates, shareholders, officers,
14 directors, employees, agents, servants, registered representatives, attorneys, insurers, successors
15 and assigns of Defendant, from any and all claims, debts, liabilities, demands, obligations,
16 penalties, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of
17 whatever kind or nature, whether known or unknown, arising during the period from August 18,
18 1999 until the Settlement Effective Date that were alleged or could have been alleged in the
19 Lawsuit concerning Lease Claims.

20 10. By operation of this Final Order and the Settlement Effective Date, the Settlement
21 Class and each individual class member waive all rights and benefits afforded by Section 1542 of
22 the Civil Code of the State of California, and do so understanding the significance of that waiver.
23 Section 1542 provides:

24 "A general release does not extend to claims which the
25 creditor does not know or suspect to exist in his favor at the
26 time of executing the release, which if known by him must
have materially affected his settlement with the debtor."

27 In order to achieve a full and complete release of Defendant of all Lease Claims arising from or
28 related to the lawsuit, each Class Member acknowledges that this Settlement Agreement is

1 intended to include in its effect all Lease Claims regarding the subject matter of the complaint
2 which were or could have been asserted in this Lawsuit, including claims which each Class
3 Member does not know or suspect to exist in his or her favor against Defendant.


4 11. The Settlement Agreement is not an admission by Defendant nor is this Final
5 Order a finding of the validity of any Lease Claims in the Lawsuit or any wrongdoing by
6 Defendant. Furthermore, neither the Settlement Agreement, any document, statement, proceeding
7 or conduct related to the Settlement or the Settlement Agreement, nor any reports or accounting
8 of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or
9 deemed to be evidence for any purpose adverse to Defendant, including, but not limited to,
10 evidence of a presumption, concession, indication or admission by Defendant of any liability,
11 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
12 evidence against Defendant, in any further proceeding in the Lawsuit, or any other civil, criminal
13 or administrative action or proceeding except for purposes of effectuating the Settlement
14 Agreement. However, the Settlement Agreement may be admitted in evidence and otherwise
15 used in any and all proceedings to enforce any or all terms of the Settlement Agreement, or in
16 defense of any claims released or barred by the Settlement Agreement.

17 12. The Lease Claims are hereby dismissed with prejudice from the Lawsuit, provided,
18 however, and without affecting the finality of this Final Order in any way, this Court retains
19 continuing jurisdiction over: (i) interpretation, implementation and enforcement of this
20 Settlement; and (ii) enforcement and administration of the Settlement Agreement.

21 13. The Court finds that the Settlement Agreement was entered into in good faith and
22 constitutes a fair, reasonable and adequate compromise of Plaintiffs' claims against Defendant.

23 IT IS SO ORDERED.

24 Dated: May 1, 2006

25 
26 Jeffrey S. White
27 Judge of the District Court
28

[Proposed] Order Granting Joint Motion For Final Approval of Class Action Settlement
Regarding "Lease Claims" jointly submitted by:

Dated: March 26, 2006 MARK R. THIERMAN
THIERMAN LAW FIRM

By: 
Mark R. Thierman

Attorney for Plaintiffs Bret Robert Osborn, Michael Pfaff,
Kathleen Ann Pfaff and Marty Gayle Osborn

Dated: March 26, 2006 H. TIM HOFFMAN
ARTHUR LAZEAR
HOFFMAN & LAZEAR

By: 
H. Tim Hoffman

Attorneys for Plaintiffs Bret Robert Osborn, Michael Pfaff,
Kathleen Ann Pfaff and Marty Gayle Osborn

Dated: March __, 2006 HOWARD C. HAY
PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: _____
Howard C. Hay

Attorneys for Defendant
EMC Corporation

Dated: March __, 2006 SARAH A. JAIN
PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: _____
Sarah A. Jain

Attorneys for Defendant
EMC Corporation

1 [Proposed] Order Granting Joint Motion For Final Approval of Class Action Settlement
2 Regarding "Lease Claims" jointly submitted by:

3 Dated: March __, 2006

MARK R. THIERMAN
THIERMAN LAW FIRM

6 By: _____
Mark R. Thierman

7 Attorney for Plaintiffs Bret Robert Osborn, Michael Pfaff,
8 Kathleen Ann Pfaff and Marty Gayle Osborn

9 Dated: March __, 2006

H. TIM HOFFMAN
ARTHUR LAZEAR
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12 By: _____
H. Tim Hoffman

14 Attorneys for Plaintiffs Bret Robert Osborn, Michael Pfaff,
Kathleen Ann Pfaff and Marty Gayle Osborn

15 Dated: March 27, 2006

HOWARD C. HAY
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18 By: 
Howard C. Hay

20 Attorneys for Defendant
EMC Corporation

21 Dated: March 27, 2006

SARAH A. JAIN
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24 By: 
Sarah A. Jain

26 Attorneys for Defendant
EMC Corporation